



APEX Subscriptions Agreement – U.S. Public

Last Updated: May 6, 2024

This Dell APEX Subscriptions Agreement (“**Agreement**”) applies to the Dell Technologies Subscription for flexible consumption ordered by the U.S. Public Customer from the Dell Technologies entity named in the Order (“**Dell**”). “This Agreement includes and incorporates by reference each Order and references herein to Agreement include the Dell APEX Subscriptions Agreement – U.S. Public and each Order. In the event of a conflict between an Order and this Agreement, the Order (and all documents incorporated into it) prevails. The Effective Date of the Agreement is the earlier of (i) the latest date of signature on the Order or (ii) the date You first use the Subscription. Capitalized terms used in this Agreement are defined below in Section 11 ([Definitions](#)).

1. **Orders and Payment.**

1.1 Orders. The description of the Products, Services, additional terms and related pricing are as stated in the applicable APEX Subscriptions Order (Direct) (“**Order**”).

1.2 Ordering. You indicate acceptance of an Order by signing it, and issuing a purchase order to Dell that references the Order (unless Dell grants an exception to this purchase order requirement). Dell accepts an Order by (i) counter-signing the Order; and (ii) shipping the Products to Customer.

1.3 **Payment.**

A. Rates. You must pay all fees for use of the Subscription including fees for usage and other offerings according to the rates, currency and pricing stated in the applicable Order. In no event will the Fee for any Billing Period be less than the Monthly Commitment, and You are responsible to pay Dell the fees for the Monthly Commitment even if actual usage is less than the Monthly Commitment.

B. Invoicing. If Dell is obligated by applicable law to collect and remit any taxes or fees, then Dell will add the appropriate amount to Your invoices as a separate line item in accordance with statutory requirements. Dell may invoice parts of an Order separately or together in one invoice. All invoice terms will be deemed accurate unless You advise Dell in writing of a material error within 10 days following receipt. If You advise Dell of a material error, (a) any amounts corrected by Dell in writing must be paid within 14 days of correction, and (b) all other amounts must be paid by the due date. If You withhold payment because You believe an invoiced amount is incorrect, and Dell concludes that the amount is accurate, it is due immediately. You may not offset, defer or deduct any invoiced amounts that Dell determines are correct following the notification process stated above.

C. Payment Terms. You must pay Dell’s invoices in full within thirty (30) days after the date of Dell’s invoice. Dell may invoice You for Fees even if a corresponding purchase order was not received from You. Notwithstanding anything in the Agreement, Your obligation to pay the Fees for the Subscription Term is non-cancellable. In case of Your default in payment, Dell is, until arrangements as to payment or credit have been established, entitled to: (i) cancel or suspend its performance of such Order and/or (ii) withhold performance under this Agreement. Termination or expiration of this Agreement does not affect Your obligation to pay all amounts due hereunder.

D. Taxes. The charges due hereunder are exclusive of, and You must pay or reimburse Dell for all value added (VAT), sales, use, excise, withholding, personal property, goods and services and other similar taxes, governmental fees, levies, customs and duties resulting from Your purchase, except for taxes based on Dell’s net income, gross revenue, or employment obligations. If You qualify for a tax exemption, You must provide Dell with a valid certificate of exemption or other appropriate proof of exemption. If You are required to withhold taxes, then You will within 60 days of remittance to the applicable tax authority provide Dell with satisfactory evidence (e.g., official withholding tax receipts) that You have accounted to the relevant authority for the sum withheld or deducted, otherwise Dell will charge You for the amount that You have deducted for the transaction.

1.4 Purchase Orders. Unless Dell has granted an exception to the purchase order requirement, Your initial purchase order must specify an amount that is at least equal to the fee for the Monthly Commitment multiplied by the number of months in the Subscription Term. If Dell reasonably determines that the amount of Your original purchase order will not cover the actual Fee due to Reserve Usage, then Dell will notify and discuss the situation with You. Upon agreement on the



additional funds, You will promptly issue a related purchase order for that additional amount. The parties agree the terms and conditions of each Order are Confidential Information.

2. Delivery, Site, Use, Risk, and Return.

2.1 Delivery; Site. Dell will ship the Products to the Site stated in the Order. Before arrival of the Products and during the Subscription Term, You must have arranged: (i) appropriate space at the Site; (ii) the necessary environment (power, cooling, etc.) required to support and operate the Products; and (iii) servers and network connectivity required to support Products. The Products may not be moved from the Site without Dell's prior written consent. You grant or will obtain the right for Dell's reasonable access to the Site for purposes of: (i) providing Services; (ii) metering; (iii) inspecting the Products; (iv) performing Asset Recovery; and (v) exercising Dell's other rights set forth in this Agreement. In case the Equipment is installed at a Colocation Site, You guarantee that Dell has the right to exercise its rights concerning the Products stated above. You agree to hold Dell harmless from and against any and all disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) resulting from You locating the Products at a Colocation Site. Where software is provided in a form that is embedded on the Equipment, Dell will enable any required license keys by electronic means.

2.2 Title to Products. Dell retains title to Products at all times notwithstanding the manner in which such may be attached or affixed to realty.

2.3 Risk of Loss. You are responsible for risk of loss, theft, damage or destruction of the Product(s) from the date of delivery until Asset Recovery. If any such loss occurs during the Subscription Term, You must promptly notify Dell and continue to pay all Fees until the impacted Products are repaired or replaced at Your expense. Until such time as the Products are repaired or replaced, Dell is relieved of its obligations to the extent such events impact Dell's ability to perform.

2.4 Use. You may use the Products at the Site only during the Subscription Term for your internal business operations. Your rights to use the Products provided by Dell during the Subscription Term are governed by the terms of this Agreement, the applicable Offering Specific Terms, and, for Software, the terms of the applicable end-user license agreement. Unless different terms have been agreed between the parties, the terms posted on www.dell.com/eula ("EULA") for the relevant Software product family and effective as of the date of the applicable Order apply. You agree that use of the Products will not violate any applicable law, including but not limited to: violation of the rights of others, violation of laws concerning child pornography or laws concerning illegal gambling. You will not use the Products to stalk, harass or harm anyone, including minors, or be abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, advocate violence or encourage illegal activity.

2.5 Third Party Products. Third Party Products offered to You under an Order are subject to the standard terms, license, services, warranty, indemnity and support terms of the third-party manufacturer/supplier (or applicable direct agreement between You and such manufacturer/supplier). You agree to such terms and You will contact such third party directly for support or other offerings-related issues. In return, any warranty, damages or indemnity claims against Dell in relation to Third Party Products are excluded. **Dell makes no express warranties or conditions, and disclaims all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement as well as any warranty arising by statute, operation of law, course of dealing or performance or usage of trade even if support and licensing fees are invoiced through Dell.** The licensing terms for some Third Party Products can be found in the Offering Specific Terms. Unless otherwise provided in your license agreement with the third-party manufacturer/supplier, You acknowledge that your right to use the Third Party Products is limited to the Subscription Term and any agreed upon extension thereto in accordance with this Agreement.

2.6 Services. Scope and the details of Services and Product-specific terms are specified in the applicable standard service description that is referred in the Order and made available through the Offering Specific Terms. Such standard descriptions are from time to time referred to as "Service Description(s)", "Product Notices" or "Service Briefs." The version of the applicable document that is effective as of the date of the applicable Order, is deemed incorporated into this Agreement. Scope and details of customized Professional Services, if any, not covered by such a standard description will be documented in a mutually agreed Statement of Work ("**SOW**"). You agree that failure to comply with



this Agreement, including the applicable standard service description and the End User Operating Environment Warranty, may limit Dell's ability to provide Services. In such case, proactive support capabilities, response times or other service levels may no longer apply, and Dell may make the continuation of Services and/or the Subscription dependent on an adjustment of fees and reasonable charges for any recertification necessary for continued support.

2.7 Ownership of Customer Content. You agree that: (i) Customer Content remains Your responsibility; and (ii) Dell does not handle, process or direct the use of Customer Content.

2.8 Return of Products; Data Migration. No later than seven (7) days after the end of the Subscription Term, You must: (i) migrate and erase (by method that does not cause damage to the Products) Customer Content from the Products and (ii) make the Products available to Dell for Asset Recovery. Unless Dell has agreed in writing to perform data migration, Dell is not responsible for removing Customer Content from the Products. If You have not deleted Customer Content from the Products, it may be deleted by Dell. At no time, will Dell be responsible for, or bear any liability for any Customer Content that is not erased or removed from the Products before Asset Recovery. To the extent permitted by applicable law, You will indemnify and defend Dell for any claims relating to any Customer Content. The parties will mutually agree on a time for Asset Recovery, but in no case will Asset Recovery occur later than seven (7) days after the end of the Subscription Term unless another date has been agreed in writing by Dell. You will continue to pay Fees until You have removed the Customer Content and Asset Recovery occurs.

2.9 Increasing Monthly Commitment / Subscription Term. During the Subscription Term, You may request to increase (i) the Monthly Commitment; or (ii) both the duration of the Subscription Term and the Monthly Commitment at the applicable Monthly Unit Rates stated in the Order by entering into an Order amendment. If the parties have mutually agreed on the increase, Dell will send You an Order amendment for execution. Once signed by You and Dell, Dell will invoice You based on the new pricing in the Order amendment. When extending the duration of the Subscription Term, the revised duration continues to be measured from the original starting date of the Subscription Term. For example, if the duration of Subscription Term was twenty-four (24) months and the Order amendment adds six (6) months, then the new Subscription Term is a total of thirty (30) months, beginning with the original Subscription Term. The revised Monthly Unit Rate commences on the first day of the first month following the month in which the Order amendment becomes effective.

2.10 Month to Month Extensions. Prior to the expiration of the applicable Subscription Term, You must notify Dell if You no longer wish to use the Products. Dell will continue to charge You and You must pay applicable Fees to Dell on a month-to-month basis until You have removed Customer Content, made the Products available to Dell for Asset Recovery, and Asset Recovery occurs.

3. Metering.

3.1 Authorization to Meter; Subscription Usage.

During the Subscription Term, Dell meters usage and collects telemetry data relating to the Products as further provided in the [Dell Telemetry Data Provision](#). Dell is authorized to meter and/or audit the usage to calculate the associated fees via electronic means in accordance with the Dell Telemetry Data Provision and through on-site inspection by Dell personnel. Dell agrees to cooperate with You to minimize the impact of any Dell on-site inspection on Your operations.

You agree that:

- A. Dell may store Measuring Equipment at the Site and to load Measuring Equipment onto Products;
- B. Dell may have reasonable access to the Measuring Equipment at the Site;
- C. You will provide and maintain equipment (a physical server or virtual machine) necessary to run storage metadata telemetry collection software and enable electronic communications between the Products and Dell;
- D. You will not disable, interfere in the operation of the Measuring Equipment, or copy or make any use of the Measuring Equipment whatsoever;



E. You will protect the Measuring Equipment from disclosure to a third-party; and

F. You must promptly install and make available for use all Products contained in each Order including all components that Dell ships to Your Site (e.g., hard drives, etc.).

3.2 Interruption of Metering Capabilities.

If, for more than seven (7) days of any calendar month, Dell is unable to meter usage due to: (i) any action by anyone other than Dell, or (ii) a failure of any communications equipment used for facilitating metering, then Your usage will be deemed to be equal to the usage during the previous Billing Period, and You must pay Fees for such deemed usage. If Dell is unable to meter for a period of more than thirty (30) days due to (i) or (ii) or You otherwise fail to comply with [Clause 3.1 \(Authorization to Meter, Subscription Usage\)](#) of this Agreement, Your usage will be deemed to be equal to the maximum capacity of the Products and You must pay Fees for such deemed usage. If Dell is unable to meter usage due to any failure which is caused by Dell (e.g., failure of the Measuring Equipment), Your usage will be deemed to be equal to the previous Billing Period and You must pay Fees for such deemed usage. Dell will promptly notify You of an inability to access the Products (electronically or physically, as applicable) and work cooperatively to reestablish access.

4. Warranty.

4.1 Warranty and Remedy. During the initial Subscription Term, Dell will exercise reasonable care to maintain a Product's ability to perform substantially in accordance with the corresponding standard documentation issued by Dell for the applicable Product under normal usage and with regular recommended service and provide Services in a workmanlike manner. You will promptly provide Dell with written notice of any failure to conform with the foregoing warranty but within ten days after the date on which such failure first occurs for Services. Dell's entire liability and Your exclusive remedies for any failure to comply with this warranty are as follows: Dell will make reasonable efforts to correct the non-conformance within a reasonable period of time, not to exceed 30 days from receipt of Your notice (the "**Cure Period**"); and (a) if Dell is unable to correct the non-conformance during the Cure Period for reasons for which Dell is responsible, then Dell will replace the non-conforming Product or reperform the applicable Services; or (b) if Dell, at its sole discretion, determines such is not reasonably possible, then You or Dell may terminate the applicable Order and You may seek from Dell a refund of any fees You prepaid to Dell for the Subscription that will not be provided as a result of the termination.

4.2 Limitations. The warranties set forth in this clause do not cover problems that arise from: (i) accident or neglect by You or any third party; (ii) any third party items or services with which the Product is used or other causes beyond Dell's control; (iii) installation, operation or use not in accordance with Dell's instructions and the applicable documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than Dell personnel or (vi) causes attributable to normal wear and tear (e.g., cosmetic damage that doesn't affect the Product's functionality). Dell has no obligation for: (1) Software installed or used beyond the licensed use, or (2) Product whose original identification marks have been altered or removed. Products and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Products or Services could lead to death, bodily injury, or physical or property damage (collectively, "**High-Risk Activities**"). You agree that You are not relying on delivery of future functionality, public comments or advertising by Dell, or product roadmaps when purchasing a Subscription.

4.3 Warranty Disclaimer. Other than the warranties set forth in this clause, and to the maximum extent permitted by applicable law, Dell and Dell's Affiliates: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade. Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities. Dell is not liable for delays, interruptions, service failures or other problems inherent in use of internet and electronic communications or for issues related to Colocation Sites.

4.4 End User's Operating Environment Warranty. You agree to operate the Products: (i) with reasonable care, (ii) in accordance with the documentation and configuration provided by Dell, and (iii) in accordance with industry standards



(including but not limited to maintaining a regular data back-up system for Customer Content). You agree to keep the Products located at the Site free and clear from any liens or encumbrances. You must give immediate written notice of any attachment or judicial process affecting the Products or Dell's ownership.

5. Term and Termination.

5.1 Agreement Term and Termination. This Agreement commences on the Effective Date and continues until terminated pursuant to this Section. A party may terminate this Agreement for convenience by sending written notice of termination to the other party. Such termination becomes effective forty-five (45) days after receipt of the notice. Such termination does not terminate any Order already in effect and does not impact any renewal provisions of such Orders. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to confidentiality, payment and liability, survives.

5.2 Events of Default. The occurrence of any of the following constitute an "Event of Default": (i) Your failure to pay the fee when due under the Order; (ii) Your failure to perform any provision, covenant, condition contained in this Agreement, which failure continues for 30 days from Dell's notice thereof; or (iii) Your Bankruptcy.

5.3 Remedies. If an Event of Default occurs, Dell may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders; (ii) by notice in writing to You, declare immediately due and payable, and You are obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) as a mutually agreed pre-estimate of damages and not a penalty, all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iii) require Customer to make Products available for Asset Recovery at the Site as provided in [Clause 2.8 \(Return of Products; Data Migration\)](#) of this Agreement. The parties will reasonably cooperate for Dell to recover the Products. You are responsible for the payment of the actual documented costs and reasonable attorney's fees incurred by Dell in retaking possession of the Products and/or seeking to recover amounts due.

5.4 Appropriation of Funds. Customer may terminate an Order in whole, but not in part by giving at least sixty (60) days notice prior to the end of the then current Fiscal Period (as defined in the Customer's Secretary/Clerk's Certificate or other such documentation as reasonably requested by and provided to Dell) certifying that: (1) sufficient funds were not appropriated and budgeted by Customer's governing body or will not otherwise be available to continue the Order beyond the current Fiscal Period; and (2) that Customer has exhausted all funds legally available for payment of the Order beyond the current Fiscal Period. Notwithstanding the foregoing, Customer agrees that, without creating a pledge, lien or encumbrance upon funds available to Customer in other than its current Fiscal Period, it will use its best efforts to take all action necessary to avoid termination of an Order, including making budget requests for each Fiscal Period during each applicable Subscription Term for adequate funds to meet its obligations hereunder and to continue the Order in force. Upon termination of an Order, Customer must make the Products available for Asset Recovery at the Site as provided in [Clause 2.8 \(Return of Products; Data Migration\)](#).

5.5 Essential Use/Intent. Customer agrees that early termination of an Order is highly unlikely because the acquisition, quantity and use of APEX Subscriptions are deemed to be essential to Customer's operations. Customer agrees that it will take all reasonable affirmative steps to ensure all payments during Order and the Subscription Term are made.

6. Indemnity.

6.1 Indemnification by Dell. Dell will: (i) defend You against any third party claim that Products or Support Services (but excluding Third Party Products, any Product provided for evaluation or without charge, and open source software) infringe that party's patent, copyright, or trade secret enforceable in the country where You purchased the Subscription from Dell ("Claim"); and (ii) indemnify You by paying: (a) the resulting costs and damages finally awarded against You by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (b) the amounts stated in a written settlement negotiated and approved by Dell. In addition, should any Product or Support Service become, or in Dell's opinion be likely to become, the subject of such a Claim, Dell may, at its expense and in its discretion: (1) obtain a right for You to continue using the affected Product or Support Service; (2) modify the affected Product or Support Service to make them non-infringing; (3) replace the affected Product or Support Service with non-infringing substitutes; (4) notify You to return the Product and discontinue Support Services, and, upon receipt of the Products,



refund the remaining portion, of any, of any prepaid Fees. Except as otherwise provided by law, this Clause 6.1 (Indemnification by Dell) states Your exclusive remedies for any third party intellectual property claim relating to the Products or Support Services, and nothing in this Agreement or elsewhere will obligate Dell to provide any greater indemnity.

6.2 Limitations. Dell has no obligation under [Clause 6.1 \(Indemnification by Dell\)](#) above: (i) if You are in material breach of this Agreement or the Order; or (ii) for any Claim resulting or arising from: (a) any combination, operation or use of a Product or Support Service with any other products, services, items, or technology, including Third Party Products and open source software; (b) use for a purpose or in a manner for which the Product or Support Service was not designed, or use after Dell notifies You to cease such use due to a possible or pending Claim; (c) any modification to the Product made or Support Service performed by any person other than Dell or its authorized representatives; (d) any modification made to the Product or Support Service performed by Dell pursuant to instructions, designs, specifications or any other information provided to Dell by You or on Your behalf; (e) use of any version of a Product when an upgrade or newer iteration of the Product or Support Service made available by Dell would have avoided the infringement; (f) services provided by You (including Claims seeking damages based on any revenue or value You derive from Your services); or (g) any data or information that You or a third party records on or utilizes in connection with the Product or Support Service including Customer Content.

6.3 Other Indemnity. Dell will defend and indemnify You against any third party claim or action for personal bodily injury, including death, to the extent directly caused by Dell's gross negligence or willful misconduct in the course of performing its obligations under this Agreement. "**Claim**" includes a third party claim under this Clause 6.3 (Other Indemnity).

6.4 Indemnification Process. Dell's duty to defend and indemnify under this Agreement is contingent upon You: (i) sending prompt written notice of the Claim to Dell and taking reasonable steps to mitigate damages; (ii) granting to Dell the sole right to control the defense and resolution of the Claim; and (iii) cooperating with Dell in the defense and resolution of the Claim and in mitigating any damages.

7. Limitation of Liability.

7.1 Limitations on Damages. Your, and Dell's (including Dell's suppliers and Affiliates) maximum liability for all disputes arising under the Agreement ("**Disputes**") is limited, to the extent permitted by law, to the greater of: (a) \$100,000 USD (or the equivalent in local currency); or (b) the amount You paid to Dell for the Subscription during the 12 months immediately before the events giving rise to any dispute. This limitation applies even if any limited remedy in the Agreement is found to have failed in its essential purpose. In addition, neither You nor Dell (including Dell's suppliers and Affiliates) are liable to the other for any special, consequential, exemplary, punitive, incidental, or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use, or procurement of substitute products or services, even if the party alleged to be liable has knowledge of the possibility of such damages. The foregoing limitations and exclusions do not apply to: (i) Your obligation to pay for the Subscription, (ii) Your obligation to pay for damage to or loss of the Products, (iii) Your violation of the restrictions on use of the Products, (iv) Your violation or misappropriation of the Dell's intellectual property rights, (v) a party's indemnity obligation stated in this Agreement; or (vi) where prohibited by applicable law. Dell, Dell's suppliers and Dell's Affiliates have no liability for any damages resulting from Your use or attempted use of Third Party Products, or Free Software or Development Tools (both as defined in the [EULA](#)).

7.2 Prevention and Mitigation. You are solely responsible for Customer Content and for maintaining an IT architecture, as well as processes, enabling You to prevent and mitigate damages in line with the criticality of the Customer Content for Your business and its data protection requirements, including a business recovery plan. You will: (a) provide for a backup process in accordance with industry standards including but not limited to backup relevant data before Dell performs any remedial, upgrade or other works on the Products or Your IT systems; (b) monitor the availability and performance of Your IT environment, including the Products; and (c) promptly react to messages and alerts received from Dell or through notification features of the Products and immediately report any issue You identify to Dell. To the extent that Dell has any liability for loss of Customer Content made available by applicable law, Dell will only be liable for the cost of commercially reasonable and customary efforts to recover the lost Customer Content from Your last available backup.

8. Trade Compliance. You are subject to and responsible for compliance with the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions (collectively, "**Applicable Trade Laws**").



The Subscription and any other products or services are for Your authorized use under this Agreement, and may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with the Applicable Trade Laws. You represent and warrant that You are not the subject or target of, or located in a country or territory that is the subject or target of economic sanctions under the Applicable Trade Laws. To the extent permitted by applicable law, Customer will defend and indemnify Dell against any third party claim resulting from a breach of any of the foregoing. For further information about geographical restrictions and compliance with Applicable Trade Laws, visit [Dell Trade Compliance](#).

9. Confidentiality.

9.1 Scope. "Confidential Information" means any information, pricing, technical data or know-how furnished in connection with the scope of this Agreement, whether in written, oral, electronic, website-based, or other form, by a You or Your Affiliate to Dell or a Dell Affiliate or vice versa and that: (i) is marked, accompanied or supported by documents clearly and conspicuously designating such documents as "confidential", "internal use" or the equivalent; (ii) is identified by the discloser as confidential before, during or promptly after the presentation or communication; or (iii) should reasonably be known by the recipient to be confidential. Confidential Information does not include information that is: (a) rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party; (b) a matter of public knowledge (or becomes a matter of public knowledge other than through breach of confidentiality by the other party); (c) rightfully furnished to the receiver by a third party without confidentiality restriction; or (d) independently developed by the receiver or its Affiliates without reference to the discloser's Confidential Information.

9.2 Protection. Each party will ensure that, where it or one of its Affiliates is the receiver of Confidential Information hereunder, the receiver will (a) use Confidential Information of the discloser only for the purposes of exercising rights or performing obligations in connection with this Agreement or any Order hereunder; and (b) protect from disclosure to any third parties any Confidential Information disclosed by the discloser, both for a period commencing upon the date of disclosure until 3 years thereafter. Subject to the terms of this Section 9, the foregoing obligations will never expire in relation to technical information about a discloser's products and services or any information about possible unreleased products or services, and survive any termination or expiration of this Agreement.

9.3 Exceptions. Notwithstanding the foregoing, either party and its Affiliates may disclose Confidential Information (1) to an Affiliate, or to a subcontractor used by Dell to provide Services under this Agreement, as long as the Affiliate or subcontractor has a need-to-know and complies with the foregoing; (2) to either party's directors, officers, employees, and professional advisors and those of its Affiliates, and (3) if required by law or regulatory authorities provided the receiver has given the discloser prompt notice.

10. General.

10.1 Governing Law; Jurisdiction. This Agreement is governed by the laws of the State in which Customer is located. Subject to applicable state and local laws, the exclusive venue for all litigation arising between the parties related to this Agreement and any Orders issued hereunder shall be in the federal courts sitting within the State in which Customer is located. BOTH PARTIES HEREBY WAIVE TRIAL BY JURY.

10.2 Notices. The parties will provide all notices under this Agreement in writing. Customer must provide notices to Dell at the Dell address on the Order.

10.3 Assignment. The assignment or transfer, whether by operation of law or otherwise, of a party's right(s) or delegation of obligation(s) under this Agreement, require the consent of the other party. Notwithstanding the foregoing, Dell may use Dell Affiliates or other qualified subcontractors to perform its obligations hereunder, provided that Dell remains responsible for the performance thereof, and either party may assign the rights to payment arising under an Order without the consent of the other party.

10.4 Entire Agreement. This Agreement and each Order hereunder comprise the complete statement of the agreement between You and Dell regarding the subject matter thereof and may be modified only by written agreement.



10.5 Force Majeure. Neither party is liable to the other for any delay or failure to perform any of its obligations (other than for the payment of fees) caused by Force Majeure. If such delay or failure lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, the relevant Order by giving written notice to the delayed party. "Force Majeure" refers to circumstances beyond a party's reasonable control including, without limitation, act of God, war, riot, civil commotion, terrorist acts, malicious damage, governmental or regulatory actions, accident, breakdown of plant or machinery, local or national emergency, explosions, fire, natural disasters, severe weather or other catastrophes, epidemics/pandemics, general import/export/customs process problems affecting supplies to Dell or to You, shortages in materials, failure of a utility service or transport network, embargo, strike, lock out or other industrial dispute (whether involving Dell's workforce or any other party), or default of suppliers or subcontractors due to any of the preceding events.

10.6 Independent Contractors. The parties are independent contractors for all purposes under this Agreement and cannot obligate any other party without prior written approval. The parties do not intend anything in this Agreement to allow any party to act as an agent or representative of a party, or the parties to act as joint venturers or partners for any purpose. No party is responsible for the acts or omissions of any other.

10.7 Third Party Rights. There are no third party beneficiaries to this Agreement or any Order under any laws.

10.8 Waiver and Severability. Failure to enforce a provision of this Agreement will not constitute a waiver of that or any other provision of this Agreement. If any part of this Agreement or an Order is held unenforceable, the validity of the remaining provisions will not be affected.

11. Definitions.

11.1 "Affiliate" or "Affiliates" means any other entity that controls, is owned by, controlled by or under common ownership or control with You, and with respect to Dell, "Affiliate" means Dell Technologies Inc. and its wholly-owned subsidiaries. "Control" means more than 50% of the voting power or ownership interests.

11.2 "Asset Recovery" of a Product means Dell taking possession of the Product.

11.3 "Bankruptcy" means bankruptcy, receivership, examinership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings or statutory process instituted by or against the applicable entity, or all or any part of its property under the applicable law where such entity is organized, and such entity consents thereto or fails to cause the same to be discharged as per local legal requirements.

11.4 "Billing Period" means the period of time identified in an Order for which Dell will invoice Partner for the Subscription.

11.5 "Colocation Site" means, where applicable, a third-party Site.

11.6 "Customer Content" means data (including all text, sound, video, and image files), software (including machine images), and other information You or Your end users store, use or make available to Dell through use of the Subscription. Customer Content does not include System Data relating to Your use of the Products and which is described in the Dell Telemetry Data Provision.

11.7 "Fee" means the fees for the Monthly Commitment and the Reserve Usage.

11.8 "Measuring Equipment" means the equipment, software and programming needed for Dell to track usage levels and perform Support Services.

11.9 "Monthly Commitment" means the minimum amount of usage You commit to paying for each month as specified in an Order regardless of the actual usage.

11.10 "Offering Specific Terms" means those terms available at www.dell.com/offeringspecificterms.



11.11 “Order” or “APEX Subscriptions Order (Direct)” means Your order to Dell for the Subscription that is confirmed by Dell.

11.12 “Products” means (i) Dell-branded IT hardware products (“Equipment”) or (ii) Dell-branded generally available software, whether microcode, firmware, operating systems or applications (“Software”). Products exclude Services and Third Party Products.

11.13 “Professional Services” are consulting, implementation and any other services that are not Services.

11.14 “Reserve Usage” means the amount of Your flexible consumption usage above the Monthly Commitment.

11.15 “Services” are Dell’s standard service offerings for maintenance and support of Products (“Support Services”) and deployment services (“Deployment Services”).

11.16 “Site” means the location of the Product installation as identified on an Order.

11.17 “Subscription” means the use of a Product on a flexible consumption basis as measured by the description and metrics in Your Order and this Agreement.

11.18 “Subscription Term” means the time period identified on an Order for use of the Products, and any Dell approved extension(s) thereto. The Subscription Term commences on the first day of the month following the date the Products have been installed at the Site, or, if You delay the installation process or if Your Site is not prepared for the installation of the Products, the first day of the second month following the Product’s arrival at the Site.

11.19 “Third Party Products” means hardware, software, products, or services that are not “Dell” or “Dell EMC” branded.

11.20 “U.S. Public Customer”, “Customer” or “You” means the U.S. state or local government (a) department agency, division or office, (b) public or higher education institution, or (c) healthcare entity placing an Order with Dell for an APEX Subscriptions.



APEX Subscriptions Order (Direct – U.S. Public) (SLED)

This Dell APEX Subscriptions Order (Direct – U.S. Public) (SLED) (“Order”) sets forth the terms for a U.S. Public Customer’s purchase of APEX Subscriptions from Dell.

Order Effective Date: Click or tap to enter a date.	Contract Code:
Order Number:	Prime Contract:
Dell Technologies entity (“Dell”): EMC Corporation 176 South Street Hopkinton, MA 01748	Customer:
Products and Billing Table	
Products, Support Services Level and Deployment Services:	Identified on Attachment 1
Billing Period:	Monthly in Arrears
Subscription Term:¹	Xx Months
Site:	
Ship To Address (optional):	
Server Fee Table	
Server Type and Count:	
Billing Metric:	Active Node Hour
Monthly Unit Rate (charge per Active Node Hour per month):	
Monthly Commitment (hours as a percentage of Total Available Hours):	
Monthly Fee for Monthly Commitment:	
Storage Fee Table	
Billing Metric:	Consumed Raw GiB or Consumed Usable GiB¹
Monthly Unit Rate (charge per GiB per Month):	
Monthly Commitment (as a percentage of Metered Total Capacity):	
Monthly Fee for Monthly Commitment:	
Memory Fee Table	
Billing Metric:	Consumed Physical Node Ram

¹ Except as outlined by the Governing Terms, the Subscription cannot be terminated before the end of the Subscription Term. Please note that the Governing Terms have information on ending or extending the Subscription Term.



Monthly Unit Rate (charge per GiB per Month):	
Monthly Commitment (as a percentage of Metered Total Capacity):	
Monthly Fee for Monthly Commitment:	
Purchase Order	
Purchase Order Amount:	
Pricing Increases to Monthly Commitment/Subscription Term for the configuration in this Order	
[INSERT TABLE]	

1.0 Calculating Fees.

“**Metered Total Capacity**” means the reported capacity of the Products based upon Customer’s configuration in the applicable environment. Reports will reflect the Metered Total Capacity of Products as reported by the Product and will scale the Monthly Commitment in line with the Monthly Commitment as a Percentage of Metered Total Capacity. The Monthly Fee for Monthly Commitment, the Monthly Unit Rate, and the Monthly Commitment as a Percentage of Metered Total Capacity remain fixed.

1.1. Server.

Total Available Hours, Monthly Commitment, and Reserve Usage are measured by the Active Node Hour. Active Node Hour means the unit of measure that represents a single hour of physical node that is activated. The Active Node Hour is derived from the physical node’s aggregated peak CPU utilization percentage (the amount of a physical node’s CPU that is utilized at a given point in time, expressed as a percentage of the Product’s total available CPU), across all CPUs within the node. This unit of measure uses a threshold of greater than or equal to 5% meaning that should the server display a maximum (peak) CPU utilization of greater than or equal to 5% at any time during the hour and for any length of time, the whole hour is chargeable. This measure includes CPU utilization as a result of the operating system, hypervisor or any other software running on the physical node. The Total Available Hours will be calculated based on the number of nodes X 24 hours/day X number of months in the Subscription Term X 365/12 (days per year/12 months per year). The reserve available in any one month may vary depending on the number of days in a month.

If memory billing applies, refer to the Consumed Physical Node RAM definition below.

1.2. Storage and HCI.

A. Storage Billing. Metered Total Capacity, Monthly Commitment and Reserve Usage are measured by either the amount of Consumed Usable Storage or Consumed Raw Storage. Both amounts include storage by GiB written or reserved by the Product to provide storage to servers or used for maintaining replicas of server storage. It does not include storage used for disk formatting or dedicated spare disks. It is measured after the application of storage reduction techniques performed by the Products such as compression and de-duplication.

- i. Consumed Usable Storage** does not include storage used for Protection/RAID and (where appropriate) dynamic or virtual sparing overhead on the Product. It means that storage consumed on the Product that cannot be reused by other means is billed directly.
- ii. Consumed Raw Storage** includes storage used for Product overheads such as Protection/RAID and (where appropriate) dynamic or virtual sparing. It means that storage consumed on the Product that cannot be reused by other means is converted to a raw format by adding the parity and protection overheads.



B. HCI Billing. Metered Total Capacity, Monthly Commitment and Reserve Usage are measured by Consumed Raw Storage and Consumed Physical Node RAM.

i. Consumed Raw Storage means the amount of storage by GiB written or reserved by the Product to provide storage to servers or used for maintaining replicas of server storage. It does not include storage used for disk formatting or dedicated spare disks. It is measured after the application of storage reduction techniques performed by the Products such as compression and de-duplication. It includes storage used for Product overheads such as Protection/RAID and (where appropriate) dynamic or virtual sparing. It means that storage consumed on the Product that cannot be reused by other means is converted to a raw format by adding the parity and protection overheads.

ii. Consumed Physical Node Ram means the amount of a physical node’s random access memory that is utilized at a given point in time expressed in units of GiB. This unit of measure is represented as a mean average over a defined period of time, e.g., hourly, daily, weekly or monthly. It includes RAM consumption as a result of the operating system, hypervisor or any other software running on the physical node.

C. Reserve Cap for Storage and HCI. Dell shall charge Customer the Monthly Unit Rate for the Reserve Usage up to eighty-five (85%) percent of the total capacity. Reserve Usage between 85% and 100% of the total capacity (“**Reserve Cap**”) will be charged only in cases of: (i) interruption of monitoring when Customer is at fault, or (ii) there is an Event of Default related to this Order, where in either case Dell may invoice for use up to 100%.

1.3 Memory.

For any Server or Compute Products whose Monthly Unit Rate is based on Memory, Customer will ensure that VSphere hypervisor (version 6.5 or higher) is enabled on the Products to facilitate automated metering.

2.0 Governing Terms. This Order is subject to the (a) written agreement between Customer and Dell that is specifically designated as governing the use of Products on a flexible consumption basis or, if there is no such agreement, (b) the APEX Subscriptions Agreement – U.S. Public (SLED) available at https://i.dell.com/sites/csdocuments/Legal_Docs/en/us/apex-subscriptions-agreement-us-public.pdf.

3.0 Additional Terms

By signing this Order, the parties agree to be legally bound by this Order and the Governing Terms.

<p>Dell</p> <p>By (Sign): _____</p> <p>Name (print): _____</p> <p>Title: _____</p>	<p>Customer</p> <p>By (Sign): _____</p> <p>Name (print): _____</p> <p>Title: _____</p>
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Attachment 1



APEX Subscriptions Schedule
to
Commercial Terms of Sale

Last Updated:, November 4, 2024

This Dell APEX Subscriptions Schedule (the “**Schedule**”) establishes the terms and conditions under which Supplier ([defined below](#)) will provide the Subscription for use by Customer. The Term of this Schedule is from the Effective Date until the earlier of termination or [Asset Recovery](#). The Schedule includes and incorporates by reference all of the following terms and conditions of: (i) the Commercial Terms of Sale (“**CTS**”) for the location of the Dell entity on the Order available at [Dell Online Terms](#) (but excluding any schedules attached or incorporated thereto) and (ii) the Order. Capitalized terms used in this Schedule and not defined below in Section 7 ([Definitions](#)) have the same meanings given to such terms in the CTS. References herein to the Schedule include all of the foregoing terms and conditions. In the event of conflict, they will prevail in the following order: (a) the Order (and all documents incorporated into it); (b) the Schedule; and (c) the CTS.

1. Orders and Payment.

1.1 Orders. The description of the Subscription and related pricing are as stated in the Order.

1.2 Ordering. Customer indicates its acceptance of the Order by signing it, and issuing a purchase order to Supplier that references the Order (unless Supplier grants an exception to this purchase order requirement). Supplier accepts an Order by (i) counter-signing the Order; and (ii) shipping the Products for the Subscription to Customer.

1.3 Payment. Customer must pay all fees for use of the Subscription including fees for usage and other offerings according to the currency, rates and pricing stated in the applicable Order. The Fee per Billing Period is the sum of the fee for the Monthly Commitment plus the fee for the Reserve Usage, if any, used during that Billing Period. These fees are calculated by multiplying the applicable amount of use by the Monthly Unit Rate. In no event will the Fee for any Billing Period be less than the Monthly Commitment, and Customer is responsible to pay Supplier the fees for the Monthly Commitment even if actual usage is less than the Monthly Commitment. Customer must pay Supplier’s invoices for the Fees in accordance with the applicable Order and the payment terms of the CTS even if a corresponding purchase order was not received from Customer. Notwithstanding anything in the CTS, Customer’s obligation to pay the Fees for the Subscription Term is non-cancellable.

1.4 Purchase Orders. Unless Supplier provides an exception to the purchase order requirement, Customer’s initial purchase order must specify an amount that is at least equal to the fee for the Monthly Commitment multiplied by the number of months in the Subscription Term. That minimum amount of the purchase order is shown in the Order. Customer must pay all invoices for Fees, including, but not limited to, those that contain charges for Reserve Usage, regardless of whether or not such amounts exceed the amount of Customer’s purchase order(s) issued in connection with an Order. If Supplier reasonably determines that the amount of Customer’s purchase order will not cover the actual Fee, then Supplier will notify and discuss the situation with Customer. Upon agreement on the additional funds, Customer will promptly issue a related purchase order for that additional amount.

2. Delivery, Site, Use, Risk, and Return.

2.1 Delivery; Site. Supplier will ship the Subscription to the Site. The terms and process for shipment and delivery will be stated in the CTS. Before arrival of the Subscription and during the Subscription Term, Customer must have arranged: (i) appropriate space at the Site; (ii) the necessary environment (power, cooling, etc.) required to support and operate the Subscription; and (iii) servers and network connectivity required for Supplier to access and support the Subscription, including for the purpose of usage metering under [Clause 3 \(Metering\)](#) of this Schedule. Customer will provide Supplier with the required Site information as necessary to enable shipment, delivery, and installation of the Subscription. The Subscription may not be moved from the Site without Supplier’s prior written consent. In addition to the obligations set forth in Section 5.5 of the CTS, Customer also grants or will obtain the right for Supplier’s reasonable access to the Site for purposes of exercising Supplier’s other rights set forth in this Schedule. In case the Products are installed at a Colocation Site, Customer guarantees that Supplier has the right to exercise its rights concerning the Subscription stated above. Customer agrees to hold Supplier harmless from and against any and all disputes, claims or controversies



(whether in contract, tort (including negligence) or otherwise) resulting from Customer locating the Products at a Colocation Site.

2.2 Title to Subscription. Supplier retains title to the Subscription at all times notwithstanding the manner in which such may be attached or affixed to realty.

2.3 Risk of Loss. Customer is responsible for risk of loss, theft, damage or destruction of the Subscription from the date of delivery until Asset Recovery. If any such loss occurs during the Subscription Term, Customer must promptly notify Supplier and continue to pay all Fees until the impacted Subscription is repaired or replaced at Customer's expense. Until such time as the Subscription is repaired or replaced, Supplier is relieved of its obligations to the extent such events impact Supplier's ability to perform.

2.4 Use and Cloud Service Providers.

A. Use. Customer may use the Subscription at the Site only during the Subscription Term for its internal business operations. Customer's rights to use the Subscription provided by Supplier during the Subscription Term are governed by the terms of this Schedule, the applicable [Offering Specific Terms](#), and, for Software, the terms of the applicable end-user license agreement. Unless different terms have been agreed between the parties, the terms posted on www.dell.com/eula ("EULA") for the relevant Software product family and effective as of the date of the applicable Order apply. Customer agrees that its use of the Subscription will not violate any applicable law, including but not limited to violation of the rights of others, violation of laws concerning child pornography or laws concerning illegal gambling. Customer agrees that it will not use the Subscription to stalk, harass or harm anyone, including minors, or be abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, advocate violence or encourage illegal activity.

B. Cloud Service Providers. Notwithstanding [Clause 2.4A \(Use\)](#) of this Schedule or the [EULA](#), if Customer is a Cloud Service Provider partner in good standing in the Dell Technologies Partner Program, then Supplier grants Customer a nonexclusive and nontransferable right to use the Subscription, including any Software licensed by Supplier, to provide services to Customer's clients during the Subscription Term. Customer may allow clients to use the Subscription solely in order to access, process and manipulate the information, data and records of the client stored on, controlled by or accessed through the Subscription. Customer is responsible for any access to and use of Subscription by its clients as if such access was by Customer. Customer will not include any terms that contravene or supersede the provisions of this Agreement with its clients.

2.5 Ownership and Removal of Customer Content. All Customer Content remains the responsibility and property of Customer. The parties acknowledge and agree that Supplier does not handle, manage, access, process, or direct the use of Customer Content.

2.6 Return of Subscription; Data Migration. No later than seven (7) days after the end of the Subscription Term, Customer must: (i) migrate and erase (by method that does not cause damage to the Subscription) Customer Content from the Subscription and (ii) make the Subscription available to Supplier for Asset Recovery. Unless Supplier has agreed in writing to perform data migration, Supplier is not responsible for removing Customer Content from the Subscription. If Customer has not deleted Customer Content from the Subscription, Supplier may delete it. At no time, will Supplier be responsible for, or bear any liability for any Customer Content that is not erased or removed from the Subscription before Asset Recovery. Customer will indemnify and defend Supplier for any claims relating to any Customer Content. The parties will mutually agree on a time for Asset Recovery, but in no case will Asset Recovery occur later than seven (7) days after the end of the Subscription Term unless another date has been agreed in writing by Supplier. Customer will continue to pay Fees until Customer has removed the Customer Content and Asset Recovery occurs.

2.7 Increasing Monthly Commitment/Subscription Term. During the Subscription Term, Customer may request to increase (i) the Monthly Commitment; or (ii) both the duration of the Subscription Term and the Monthly Commitment at the applicable Monthly Unit Rates stated in an Order by entering into an Order amendment. If the parties have mutually agreed on the increase, Supplier will send Customer an Order amendment for execution. Once signed by Supplier and the Customer, Supplier will invoice Customer based on the new pricing in the Order amendment. When extending the duration of the Subscription Term, the revised duration continues to be measured from the original starting date of the Subscription Term. For example, if the duration of Subscription Term was twenty-four (24) months and the Order amendment adds six (6) months, then the new Subscription Term is a total of thirty (30) months, beginning with the



original Subscription Term. The revised Monthly Unit Rate commences on the first day of the first month following the month in which the Order amendment becomes effective.

2.8 Month to Month Extension. Prior to the expiration of the applicable Subscription Term, Customer must notify Supplier if Customer no longer wishes to use the Subscription. Supplier will continue to charge Customer and Customer agrees to pay applicable Fees to Supplier on a month-to-month basis until Customer has removed Customer Content and made the Subscription available to Dell for Asset Recovery and Asset Recovery occurs.

3. Metering.

3.1 Authorization to Meter; Subscription Usage. During the Subscription Term, Supplier meters usage and collects telemetry data relating to the Subscription as further provided in the [Dell Telemetry Data Provision](#). Supplier is authorized to meter and/or audit the usage to calculate the associated fees via electronic means in accordance with the Dell Telemetry Data Provision and through on-site inspection by Dell personnel. Supplier agrees to cooperate with Customer to minimize the impact of any Supplier on-site inspection to Customer's operations.

Customer agrees that:

- A. Supplier may store Measuring Equipment at the Site and to load Measuring Equipment onto the Subscription;
- B. Supplier may have reasonable access to the Measuring Equipment at the Site;
- C. Customer will provide and maintain equipment (a physical server or virtual machine) necessary to run storage metadata telemetry collection software and enable electronic communications between the Subscription and Dell.
- D. Customer will not disable, interfere in the operation of the Measuring Equipment, or copy or make any use of the Measuring Equipment whatsoever;
- E. Customer will protect the Measuring Equipment from disclosure to a third-party; and
- F. Customer must promptly install and make available for use all Products contained in each Order including all components that Supplier ships to Customer's Site (e.g., hard drives, etc.).

3.2 Interruption of Metering Capabilities. If, for more than seven (7) days of any calendar month, Supplier is unable to meter usage due to: (i) any action by anyone other than Supplier, or (ii) a failure of any communications equipment used for facilitating metering, then Customer's usage will be deemed to be equal to the usage during the previous Billing Period, and Customer must pay Fees for such deemed usage. If Supplier is unable to meter for a period of more than thirty (30) days due to (i) or (ii) or Customer otherwise fails to comply with [Clause 3.1 \(Authorization to Meter; Subscription Usage\)](#) of this Schedule, Customer's usage will be deemed to be equal to the maximum capacity of the Subscription and Customer must pay Fees for such deemed usage. If Supplier is unable to meter usage due to any failure which is caused by Supplier (e.g., failure of the Measuring Equipment), Customer's usage will be deemed to be equal to the previous Billing Period and Customer must pay Fees for such deemed usage. Supplier will promptly notify Customer of an inability to access the Subscription (electronically or physically, as applicable) and work cooperatively to reestablish access.

4. Subscription Specification and Operating Environment.

4.1 Subscription Specification. The Products provided with the Subscription will substantially conform to the Supplier's then current standard documentation for such Products. Support Services will be performed in a workman like manner and in accordance with generally accepted industry standards.

4.2 Customer's Operating Environment Warranty. Customer agrees to operate the Subscription: (i) with reasonable care; (ii) in accordance with the documentation and configuration provided by Supplier; and (iii) in accordance with industry standards (including but not limited to maintaining a regular data back-up system for Customer Content). Customer agrees to keep the Subscription located at the Site free and clear from any liens or encumbrances. Customer must give immediate written notice of any attachment or judicial process affecting the Subscription or Supplier's ownership.



5. Supplemental Termination Provisions.

5.1 Events of Default. The occurrence of any of the following constitute an “**Event of Default**”: (i) Customer’s failure to pay the fee when due under the Order; (ii) Customer’s failure to perform any provision, covenant, condition or agreement contained in the CTS and this Schedule, which failure continues for 30 days from Supplier’s notice thereof; or (iii) Customer Bankruptcy.

5.2 Remedies. If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders; (ii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iii) require Customer to make Subscription available for Asset Recovery at the Site as provided in [Clause 2.6 \(Return of Subscription; Data Migration\)](#) of this Schedule. The parties will reasonably cooperate for Supplier to recover the Subscription. Customer is responsible for the payment of the actual documented costs and reasonable attorney’s fees incurred by Supplier in retaking possession of the Subscription and/or seeking to recover amounts due.

6. Indemnity.

6.1 Indemnification by Supplier. Supplier will: (a) defend Customer against any third party claim that Products or Support Services (but excluding Third Party Offerings, any Product provided for evaluation or without charge, and open source software) infringe that party’s patent, copyright, or trade secret enforceable in the country where Customer purchased the Subscription from Supplier (“**Claim**”); and (b) indemnify Customer by paying: (1) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (2) the amounts stated in a written settlement negotiated and approved by Supplier. In addition, should any Product or Support Service become, or in Supplier’s opinion be likely to become, the subject of such a Claim, Supplier may, at its expense and in its discretion: (a) obtain a right for Customer to continue using the affected Product or Support Service; (b) modify the affected Product or Support Service to make them non-infringing; (c) replace the affected Product or Support Service with non-infringing substitutes; (d) notify Customer to return the Product and discontinue the Subscription and, upon receipt of the Products, refund the portion of any prepaid Subscription fees that corresponds to the period of Subscription discontinuation. Except as otherwise provided by law, this [Clause 6.1 \(Indemnification by Supplier\)](#) states Customer’s exclusive remedies for any third party intellectual property claim relating to the Subscription, Products or Support Services, and nothing in this Schedule or elsewhere will obligate Supplier to provide any greater indemnity.

6.2 Limitations. Supplier will have no obligation under [Clause 6.1 \(Indemnification by Dell\)](#) of this Schedule: (a) if Customer is in material breach of this Schedule or the Order; or (b) for any Claim resulting or arising from: (1) any combination, operation or use of a Product or Support Service with any other products, services, items, or technology, including Third Party Offerings and open source software; (2) use for a purpose or in a manner for which the Product or Support Service was not designed, or use after Supplier notifies Customer to cease such use due to a possible or pending Claim; (3) any modification made to the Product or Support Service performed by any person other than Supplier or its authorized representatives; (4) any modification made to the Product or Support Service performed by Supplier pursuant to instructions, designs, specifications or any other information provided to Supplier by or on behalf of Customer; (5) use of any version of a Product when an upgrade or newer iteration of the Product or Support Service made available by Supplier would have avoided the infringement; (6) services provided by Customer; or (7) any data or information (including but not limited to all text, sound, video, and image files), software (including machine images), and other information that Customer, including its end users, or a third party stores, uses or makes available to Supplier or others through or in connection with the Subscription, Product or Support Service including Customer Content.

6.3 Indemnification Process. Supplier’s duty to defend and indemnify under this Schedule is contingent upon the Customer: (a) sending prompt written notice of the Claim to Supplier and taking reasonable steps to mitigate damages; (b) granting to Supplier the sole right to control the defense and resolution of the Claim; and (c) cooperating with Supplier in the defense and resolution of the Claim and in mitigating any damages.

7. Definitions.

The definitions used in the CTS are also used in this Schedule. The following definitions also apply:



- 7.1 **“Asset Recovery”** of a Product means Supplier taking re-possession of the Product.
- 7.2 **“Bankruptcy”** means bankruptcy, receivership, examinership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings or statutory process instituted by or against the applicable entity, or all or any part of its property under the applicable law where such entity is organized, and such entity consents thereto or fails to cause the same to be discharged as per local legal requirements.
- 7.3 **“Billing Period”** means the period of time identified in an Order for which Supplier will invoice Customer for the Subscription.
- 7.4 **“Cloud Service Provider”** or **“CSP”** means a Cloud Service Provider in good standing in the Dell Technologies Partner Program purchasing a Subscription to provide services to its customer during the Subscription Term.
- 7.5 **“Colocation Site”** means, where applicable, a third-party Site.
- 7.6 **“Customer Content”** means data (including all text, sound, video, and image files), software (including machine images), and other information that Customer, or Customer’s end users store, use or make available to Supplier through use of the Subscription. Customer Content does not include System Data relating to Customer’s use of the Subscription and which is described in the Dell Telemetry Data Provision.
- 7.7 **“Effective Date”** of this Schedule means the effective date listed on the Order.
- 7.8 **“Fee”** means the fees for the Monthly Commitment and Reserve Usage.
- 7.9 **“Measuring Equipment”** means the equipment, software and programming needed for Supplier to track usage levels and perform Support Services.
- 7.10 **“Monthly Commitment”** means the minimum amount of usage the Customer commits to paying for each month as specified in an Order regardless of the actual usage.
- 7.11 **“Offering Specific Terms”** means those terms available at www.dell.com/offeringspecificterms.
- 7.12 **“Order”** means Customer’s order to Supplier for the Subscription that is confirmed by Supplier.
- 7.13 **“Reserve Usage”** means the amount of Customer’s flexible consumption usage above the Monthly Commitment.
- 7.14 **“Site”** means the location of the Product installation as identified on an Order.
- 7.15 **“Subscription”** means the Product(s) used on a flexible consumption basis as measured by the description and metrics from the Order for a defined period of time.
- 7.16 **“Subscription Term”** means the time period identified on an Order for use of the Subscription, and any Supplier approved extensions thereto. The Subscription Term commences on the first day of the month following the date the Products have been installed at the Site, or, if Customer delays the installation process or if Customer’s Site is not prepared for the installation of the Products, the first day of the second month following the Product’s arrival at the Site.
- 7.17 **“Supplier”** or **“Dell”** means the Dell Technologies entity that enters into the Order.

8. Location Specific Terms.

Find the location of the Site in the table below for applicable Location Specific Terms. Site locations are provided in alphabetical order, except in circumstances when locations share common terms.

Site location	Applicable Location Specific Terms
Austria	The following sentence is added to the end of Clause 1.3 (Payment) of this Schedule: “The Customer must pay any other fees arising from the nature of the contract.”



	<p>The following sentence is added to the end of Clause 3.2 (Interruption of Metering Capabilities) of this Schedule: “Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive provided the amount is not less than agreed for the Monthly Commitment.”</p> <p>Clause 5.2. (Remedies) of this Schedule is replaced with the following:</p> <p>“5.2 Remedies. If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders for Events of Default 5.1(ii)-(iii); (ii) immediately terminate any or all Orders if Customer has not paid two consecutive payments or has missed payments for a not insignificant amount of the Fees; (iii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iv) require Customer to make the Subscription available for Asset Recovery at the Site as provided in Clause 2.6 (Return of Products; Data Migration) of this Schedule. The parties will reasonably cooperate for Supplier to recover the Subscription. Customer is responsible for the payment of the actual documented costs and reasonable attorney’s fees incurred by Supplier in retaking possession of the Subscription and/or seeking to recover amounts due.”</p>
<p>Brazil</p>	<p>The following new Clause 1.5 (Currency Exchange) is added to Clause 1 (Orders and Payment) of this Schedule:</p> <p>“1.5 Currency Exchange. During the Subscription Term if the exchange rate variation of the US dollar is equal to or greater than 10 percent (10%), Supplier may adjust the exchange rate in the next month’s invoice. The exchange rate variation is measured by a comparison of the exchange rate from the date of the Order and the exchange rate on the date of the applicable invoice. The exchange rates are measured from the exchange rates issued by the Central Bank of Brazil.”</p> <p>The following new clause 2.2.1 is added to Clause 2.2 (Title to Subscription) of this Schedule:</p> <p>“2.2.1. At the end of the Subscription Term (as established in each Order) it is mandatory to return the Product(s) to Supplier, as they are the property of Supplier and there is no purchase option for the Customer. The Subscription is restricted to Customer’s use of the Product during the Subscription Term at the Site as described in this Schedule and the Order.”</p> <p>Clause 6.1.1 of the CTS for Brazil is not applicable to this Schedule.</p>
<p>Canada</p>	<p>The following will be added as a new Clause 1.5 is added to Clause 1 (Orders and Payment) of this Schedule:</p> <p>“1.5 The parties have required that this Schedule be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Schedule be written in English. Les parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document éra aux termes des présentes ou découlant de l’une quelconque de ses dispositions éra préparé en anglais.”</p>



<p>Czech Republic</p>	<p>The reference to the Civil Code means Act No. 89/2012Coll., as amended.</p> <p>The following is added at the end of the preamble of this Schedule:</p> <p>“The parties shall act as independent contractors for all purposes under this Schedule. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other. The parties confirm that neither party hereto is to be considered a weaker party and that the basic conditions of this Schedule are a result of the negotiations of the parties and that each party had the opportunity to influence the content of the basic conditions of this Schedule. Further, the parties explicitly confirm that they are entrepreneurs and that they conclude this Schedule in the course of their business; accordingly, the provisions of Section 1793 and 1796 of the Civil Code shall therefore not apply to this Schedule.</p> <p>This Schedule(s) and each Order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof and the parties exclude any assumption of rights and obligations which are out of the scope of the express provisions of this Schedule and which may be derived from any current or future business practices established among the parties, either existing in general and or within the relevant industry, and which are related to the subject of the performance under this Schedule, unless such business practices are expressly agreed upon in this Schedule; and (ii) may be modified only in a writing with evidence of acceptance by both parties. All terms of any purchase order or similar document provided by Customer, that are inconsistent or conflict with this Schedule, shall be null and void and of no legal force or effect.</p> <p>The parties agree (to the fullest extent permitted by the laws of the Czech Republic) that Sections 558(2) (to the extent in which it stipulates that business practice prevails over non-mandatory provisions of law), 1740 (3), 1747, 1748, 1936 (1), 1950, 1951, 1952 (2), 1971, 1978 (2), 1980 and 1987 (2), of the Civil Code do not apply for the purposes of this Schedule. Considering the nature and circumstances of this Schedule the parties expressly agree and acknowledge that it is not their intention to enter into a lease agreement within the meaning of the Civil Code and accordingly Section 2201 of the Civil Code does not apply to this Schedule. Customer bears the risk of a change in circumstances within the meaning of Section 1765(2) of the Civil Code.”</p> <p>The following is added to the end of Clause 3.2 (Interruption of Metering Capabilities) of this Schedule: “Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment.”</p>
<p>France</p>	<p>The following is added at the end of the preamble of this Schedule:</p> <p>“Each Party acknowledges that during the pre-contractual discussions the other party has delivered and has exchanged the volume of information sufficient in order to enter into this Schedule and related contractual documents and had the opportunity to negotiate all terms and conditions.</p> <p>The parties acknowledge and agree that the aggregate of the contractual terms and conditions are a consistent and well-balanced contractual framework regarding each party’s rights and obligations, including but not limited to, warranties, liabilities and financial terms.”</p>
<p>Germany</p>	<p>The following is added to the end of Clause 2.2 (Title to Subscription) of this Schedule:</p> <p>“If the Subscriptions are inseparably combined or mixed with other items not belonging to the Supplier of which the Subscriptions become an essential part (“<i>wesentlicher Bestandteil</i>”), Supplier shall acquire co-ownership of the new item in the ration of the value of the Subscription to the combined or mixed items at the time of combination or integration. If the Subscriptions are combined or mixed in/with other items in such way that the other item is to be regarded as the main item (“<i>Hauptsache</i>”), the Customer and Supplier hereby agree that the Customer shall transfer co-ownership of this item to Supplier on a pro rata basis. Supplier hereby accepts</p>



	<p>this transfer.”</p>
	<p>The following is added to the end of Clause 3.2 (Interruption of Metering Capabilities) of this Schedule:</p> <p>“Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment.”</p> <p>Clause 5.2. (Remedies) of this Schedule is replaced with the following:</p> <p>“5.2 Remedies. If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders for Events of Default 5.1(ii)-(iii); (ii) immediately terminate any or all Orders if Customer has not paid two consecutive payments or has missed payments for a not insignificant amount of the Fees); (iii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iv) require Customer to make Subscription available for Asset Recovery at the Site as provided in Clause 2.6 (Return of Products: Data Migration) of this Schedule. The parties will reasonably cooperate for Supplier to recover the Subscription. Customer is responsible for the payment of the actual documented costs and reasonable attorney’s fees incurred by Supplier in retaking possession of the Subscription and/or seeking to recover amounts due.”</p>
<p>Japan</p>	<p>The following sentences in Clause 1.4 (Purchase Orders) of this Schedule are deleted: “If Dell reasonably determines that the amount of Customer’s purchase order will not cover the actual Fee, then Dell will notify and discuss the situation with Customer. Upon agreement on the additional funds, Customer will promptly issue a related purchase order for that additional amount.”</p>
<p>Kingdom of Saudi Arabia, Qatar, or United Arab Emirates</p>	<p>The third sentence in the preamble is deleted and replaced with the following: “The Schedule includes and incorporates by reference all of the following terms and conditions of: (i) the Commercial Terms of Sale (“CTS”) for the United Kingdom available at Dell Online Terms, as amended by this Schedule but excluding any other schedules attached or incorporated thereto and (ii) the Order.”</p> <p>The following new Clause 9 (Dispute Resolution) is added to this Schedule:</p> <p>“9. Dispute Resolution. In the event of a dispute between the parties, arising out of or in connection with this Schedule, any Order or its subject matter or formation (including non-contractual disputes or claims) (“Dispute”) then the Dispute shall be referred to and finally resolved under the London Court of International Arbitration Rules (the “Rules”), which Rules are deemed to be incorporated by reference into this Clause. For the purposes of any arbitration commenced pursuant to this Clause: (i) there shall be a sole arbitrator; (ii) the seat, or legal place, of the arbitration shall be in the Dubai International Financial Centre in Dubai, UAE (notwithstanding the place of jurisdiction identified in the CTS); (iii) the governing law of the parties’ decision to arbitrate shall be the law of the Dubai International Financial Centre and the governing laws any Dispute are the laws of England and Wales, (iv) the arbitration hearings shall take place in Dubai, UAE; (v) the language to be used in the arbitration proceedings shall be English; and (vi) the award of the arbitrator shall be final and binding on the parties. The parties agree that each of them will not challenge any arbitral award made pursuant to arbitration proceedings conducted in accordance with this Clause in any court and will submit</p>



	<p>to the jurisdiction of the courts of the Dubai International Financial Centre for the purposes of enforcement proceedings. The parties agree that each of them will not object to or challenge any application to enforce any arbitral award made pursuant to arbitration proceedings conducted in accordance with this Clause in any court and will submit to the jurisdiction of the courts of the Dubai International Financial Centre. Any right of appeal or reference to points of law to the courts is waived, to the extent that such waiver can be validly made under applicable law. Nothing in this Schedule prevents or prohibits either party from seeking urgent interim relief in any UK court of competent jurisdiction, including pre-arbitral attachments, temporary restraining orders, temporary injunctions, permanent injunctions and/or orders of specific performance, as may appear reasonably necessary to preserve the rights of either party. The application by either party to a judicial authority for such measures shall not be deemed to be an infringement or a waiver of the parties' decision to arbitrate and shall not affect the relevant powers reserved to the arbitrator pursuant to this Clause."</p>
	<p>The following new Clause 10 is added to this Schedule:</p> <p>"10. Language. This Schedule and any Orders will be written and construed in the English language, and all questions of interpretation of this Schedule and any Orders shall be resolved by reference to the same as written in English. This Schedule and any Orders may not be translated into Arabic without the prior written consent of Dell. If the Schedule or any Orders are translated into the Arabic language or any other foreign language, the English version will prevail for all purposes, including any Disputes or claims that may be resolved by any legal proceeding. All communications between the parties in relation to this Schedule and any Orders shall be in English. If, in either case, a version translated into the Arabic language is required, Customer will prepare the translation. If the translation of any communication into the Arabic language is required, Customer shall be responsible for any associated costs, including any cost that Dell incurs in order to verify that a translation provided by Customer is accurate. Customer acknowledges that any translation, whether commissioned or paid for by Dell or Customer, shall be the property of Dell and shall constitute a part of Dell's confidential information."</p>
<p>Poland</p>	<p>The following new Clause 2.9 is added to Clause 2 (Delivery, Site, Use, Risk, and Return) to this Schedule:</p> <p>"2.9. Supplier, has the status of a large enterprise within the meaning of Article 4(6) of the Act on the Prevention of Excessive Delays in Commercial Transactions of 8 March 2013."</p>
<p>Switzerland</p>	<p>The following is added to the end of Clause 3.2 (Interruption of Metering Capabilities) of this Schedule: "Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment."</p>



APEX Subscriptions Schedule
to
Commercial Terms of Sale

Last Updated:, November 4, 2024

This Dell APEX Subscriptions Schedule (the "**Schedule**") establishes the terms and conditions under which Supplier ([defined below](#)) will provide the Subscription for use by Customer. The Term of this Schedule is from the Effective Date until the earlier of termination or [Asset Recovery](#). The Schedule includes and incorporates by reference all of the following terms and conditions of: (i) the Commercial Terms of Sale ("**CTS**") for the location of the Dell entity on the Order available at [Dell Online Terms](#) (but excluding any schedules attached or incorporated thereto) and (ii) the Order. Capitalized terms used in this Schedule and not defined below in Section 7 ([Definitions](#)) have the same meanings given to such terms in the CTS. References herein to the Schedule include all of the foregoing terms and conditions. In the event of conflict, they will prevail in the following order: (a) the Order (and all documents incorporated into it); (b) the Schedule; and (c) the CTS.

1. Orders and Payment.

1.1 Orders. The description of the Subscription and related pricing are as stated in the Order.

1.2 Ordering. Customer indicates its acceptance of the Order by signing it, and issuing a purchase order to Supplier that references the Order (unless Supplier grants an exception to this purchase order requirement). Supplier accepts an Order by (i) counter-signing the Order; and (ii) shipping the Products for the Subscription to Customer.

1.3 Payment. Customer must pay all fees for use of the Subscription including fees for usage and other offerings according to the currency, rates and pricing stated in the applicable Order. The Fee per Billing Period is the sum of the fee for the Monthly Commitment plus the fee for the Reserve Usage, if any, used during that Billing Period. These fees are calculated by multiplying the applicable amount of use by the Monthly Unit Rate. In no event will the Fee for any Billing Period be less than the Monthly Commitment, and Customer is responsible to pay Supplier the fees for the Monthly Commitment even if actual usage is less than the Monthly Commitment. Customer must pay Supplier's invoices for the Fees in accordance with the applicable Order and the payment terms of the CTS even if a corresponding purchase order was not received from Customer. Notwithstanding anything in the CTS, Customer's obligation to pay the Fees for the Subscription Term is non-cancellable.

1.4 Purchase Orders. Unless Supplier provides an exception to the purchase order requirement, Customer's initial purchase order must specify an amount that is at least equal to the fee for the Monthly Commitment multiplied by the number of months in the Subscription Term. That minimum amount of the purchase order is shown in the Order. Customer must pay all invoices for Fees, including, but not limited to, those that contain charges for Reserve Usage, regardless of whether or not such amounts exceed the amount of Customer's purchase order(s) issued in connection with an Order. If Supplier reasonably determines that the amount of Customer's purchase order will not cover the actual Fee, then Supplier will notify and discuss the situation with Customer. Upon agreement on the additional funds, Customer will promptly issue a related purchase order for that additional amount.

2. Delivery, Site, Use, Risk, and Return.

2.1 Delivery; Site. Supplier will ship the Subscription to the Site. The terms and process for shipment and delivery will be stated in the CTS. Before arrival of the Subscription and during the Subscription Term, Customer must have arranged: (i) appropriate space at the Site; (ii) the necessary environment (power, cooling, etc.) required to support and operate the Subscription; and (iii) servers and network connectivity required for Supplier to access and support the Subscription, including for the purpose of usage metering under [Clause 3 \(Metering\)](#) of this Schedule. Customer will provide Supplier with the required Site information as necessary to enable shipment, delivery, and installation of the Subscription. The Subscription may not be moved from the Site without Supplier's prior written consent. In addition to the obligations set forth in Section 5.5 of the CTS, Customer also grants or will obtain the right for Supplier's reasonable access to the Site for purposes of exercising Supplier's other rights set forth in this Schedule. In case the Products are installed at a Colocation Site, Customer guarantees that Supplier has the right to exercise its rights concerning the Subscription stated above. Customer agrees to hold Supplier harmless from and against any and all disputes, claims or controversies



(whether in contract, tort (including negligence) or otherwise) resulting from Customer locating the Products at a Colocation Site.

2.2 Title to Subscription. Supplier retains title to the Subscription at all times notwithstanding the manner in which such may be attached or affixed to realty.

2.3 Risk of Loss. Customer is responsible for risk of loss, theft, damage or destruction of the Subscription from the date of delivery until Asset Recovery. If any such loss occurs during the Subscription Term, Customer must promptly notify Supplier and continue to pay all Fees until the impacted Subscription is repaired or replaced at Customer's expense. Until such time as the Subscription is repaired or replaced, Supplier is relieved of its obligations to the extent such events impact Supplier's ability to perform.

2.4 Use and Cloud Service Providers.

A. Use. Customer may use the Subscription at the Site only during the Subscription Term for its internal business operations. Customer's rights to use the Subscription provided by Supplier during the Subscription Term are governed by the terms of this Schedule, the applicable [Offering Specific Terms](#), and, for Software, the terms of the applicable end-user license agreement. Unless different terms have been agreed between the parties, the terms posted on www.dell.com/eula ("EULA") for the relevant Software product family and effective as of the date of the applicable Order apply. Customer agrees that its use of the Subscription will not violate any applicable law, including but not limited to violation of the rights of others, violation of laws concerning child pornography or laws concerning illegal gambling. Customer agrees that it will not use the Subscription to stalk, harass or harm anyone, including minors, or be abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, advocate violence or encourage illegal activity.

B. Cloud Service Providers. Notwithstanding [Clause 2.4A \(Use\)](#) of this Schedule or the [EULA](#), if Customer is a Cloud Service Provider partner in good standing in the Dell Technologies Partner Program, then Supplier grants Customer a nonexclusive and nontransferable right to use the Subscription, including any Software licensed by Supplier, to provide services to Customer's clients during the Subscription Term. Customer may allow clients to use the Subscription solely in order to access, process and manipulate the information, data and records of the client stored on, controlled by or accessed through the Subscription. Customer is responsible for any access to and use of Subscription by its clients as if such access was by Customer. Customer will not include any terms that contravene or supersede the provisions of this Agreement with its clients.

2.5 Ownership and Removal of Customer Content. All Customer Content remains the responsibility and property of Customer. The parties acknowledge and agree that Supplier does not handle, manage, access, process, or direct the use of Customer Content.

2.6 Return of Subscription; Data Migration. No later than seven (7) days after the end of the Subscription Term, Customer must: (i) migrate and erase (by method that does not cause damage to the Subscription) Customer Content from the Subscription and (ii) make the Subscription available to Supplier for Asset Recovery. Unless Supplier has agreed in writing to perform data migration, Supplier is not responsible for removing Customer Content from the Subscription. If Customer has not deleted Customer Content from the Subscription, Supplier may delete it. At no time, will Supplier be responsible for, or bear any liability for any Customer Content that is not erased or removed from the Subscription before Asset Recovery. Customer will indemnify and defend Supplier for any claims relating to any Customer Content. The parties will mutually agree on a time for Asset Recovery, but in no case will Asset Recovery occur later than seven (7) days after the end of the Subscription Term unless another date has been agreed in writing by Supplier. Customer will continue to pay Fees until Customer has removed the Customer Content and Asset Recovery occurs.

2.7 Increasing Monthly Commitment/Subscription Term. During the Subscription Term, Customer may request to increase (i) the Monthly Commitment; or (ii) both the duration of the Subscription Term and the Monthly Commitment at the applicable Monthly Unit Rates stated in an Order by entering into an Order amendment. If the parties have mutually agreed on the increase, Supplier will send Customer an Order amendment for execution. Once signed by Supplier and the Customer, Supplier will invoice Customer based on the new pricing in the Order amendment. When extending the duration of the Subscription Term, the revised duration continues to be measured from the original starting date of the Subscription Term. For example, if the duration of Subscription Term was twenty-four (24) months and the Order amendment adds six (6) months, then the new Subscription Term is a total of thirty (30) months, beginning with the



original Subscription Term. The revised Monthly Unit Rate commences on the first day of the first month following the month in which the Order amendment becomes effective.

2.8 Month to Month Extension. Prior to the expiration of the applicable Subscription Term, Customer must notify Supplier if Customer no longer wishes to use the Subscription. Supplier will continue to charge Customer and Customer agrees to pay applicable Fees to Supplier on a month-to-month basis until Customer has removed Customer Content and made the Subscription available to Dell for Asset Recovery and Asset Recovery occurs.

3. Metering.

3.1 Authorization to Meter; Subscription Usage. During the Subscription Term, Supplier meters usage and collects telemetry data relating to the Subscription as further provided in the [Dell Telemetry Data Provision](#). Supplier is authorized to meter and/or audit the usage to calculate the associated fees via electronic means in accordance with the Dell Telemetry Data Provision and through on-site inspection by Dell personnel. Supplier agrees to cooperate with Customer to minimize the impact of any Supplier on-site inspection to Customer's operations.

Customer agrees that:

- A. Supplier may store Measuring Equipment at the Site and to load Measuring Equipment onto the Subscription;
- B. Supplier may have reasonable access to the Measuring Equipment at the Site;
- C. Customer will provide and maintain equipment (a physical server or virtual machine) necessary to run storage metadata telemetry collection software and enable electronic communications between the Subscription and Dell.
- D. Customer will not disable, interfere in the operation of the Measuring Equipment, or copy or make any use of the Measuring Equipment whatsoever;
- E. Customer will protect the Measuring Equipment from disclosure to a third-party; and
- F. Customer must promptly install and make available for use all Products contained in each Order including all components that Supplier ships to Customer's Site (e.g., hard drives, etc.).

3.2 Interruption of Metering Capabilities. If, for more than seven (7) days of any calendar month, Supplier is unable to meter usage due to: (i) any action by anyone other than Supplier, or (ii) a failure of any communications equipment used for facilitating metering, then Customer's usage will be deemed to be equal to the usage during the previous Billing Period, and Customer must pay Fees for such deemed usage. If Supplier is unable to meter for a period of more than thirty (30) days due to (i) or (ii) or Customer otherwise fails to comply with [Clause 3.1 \(Authorization to Meter; Subscription Usage\)](#) of this Schedule, Customer's usage will be deemed to be equal to the maximum capacity of the Subscription and Customer must pay Fees for such deemed usage. If Supplier is unable to meter usage due to any failure which is caused by Supplier (e.g., failure of the Measuring Equipment), Customer's usage will be deemed to be equal to the previous Billing Period and Customer must pay Fees for such deemed usage. Supplier will promptly notify Customer of an inability to access the Subscription (electronically or physically, as applicable) and work cooperatively to reestablish access.

4. Subscription Specification and Operating Environment.

4.1 Subscription Specification. The Products provided with the Subscription will substantially conform to the Supplier's then current standard documentation for such Products. Support Services will be performed in a workman like manner and in accordance with generally accepted industry standards.

4.2 Customer's Operating Environment Warranty. Customer agrees to operate the Subscription: (i) with reasonable care; (ii) in accordance with the documentation and configuration provided by Supplier; and (iii) in accordance with industry standards (including but not limited to maintaining a regular data back-up system for Customer Content). Customer agrees to keep the Subscription located at the Site free and clear from any liens or encumbrances. Customer must give immediate written notice of any attachment or judicial process affecting the Subscription or Supplier's ownership.



5. Supplemental Termination Provisions.

5.1 Events of Default. The occurrence of any of the following constitute an “**Event of Default**”: (i) Customer’s failure to pay the fee when due under the Order; (ii) Customer’s failure to perform any provision, covenant, condition or agreement contained in the CTS and this Schedule, which failure continues for 30 days from Supplier’s notice thereof; or (iii) Customer Bankruptcy.

5.2 Remedies. If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders; (ii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iii) require Customer to make Subscription available for Asset Recovery at the Site as provided in [Clause 2.6 \(Return of Subscription; Data Migration\)](#) of this Schedule. The parties will reasonably cooperate for Supplier to recover the Subscription. Customer is responsible for the payment of the actual documented costs and reasonable attorney’s fees incurred by Supplier in retaking possession of the Subscription and/or seeking to recover amounts due.

6. Indemnity.

6.1 Indemnification by Supplier. Supplier will: (a) defend Customer against any third party claim that Products or Support Services (but excluding Third Party Offerings, any Product provided for evaluation or without charge, and open source software) infringe that party’s patent, copyright, or trade secret enforceable in the country where Customer purchased the Subscription from Supplier (“**Claim**”); and (b) indemnify Customer by paying: (1) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (2) the amounts stated in a written settlement negotiated and approved by Supplier. In addition, should any Product or Support Service become, or in Supplier’s opinion be likely to become, the subject of such a Claim, Supplier may, at its expense and in its discretion: (a) obtain a right for Customer to continue using the affected Product or Support Service; (b) modify the affected Product or Support Service to make them non-infringing; (c) replace the affected Product or Support Service with non-infringing substitutes; (d) notify Customer to return the Product and discontinue the Subscription and, upon receipt of the Products, refund the portion of any prepaid Subscription fees that corresponds to the period of Subscription discontinuation. Except as otherwise provided by law, this [Clause 6.1 \(Indemnification by Supplier\)](#) states Customer’s exclusive remedies for any third party intellectual property claim relating to the Subscription, Products or Support Services, and nothing in this Schedule or elsewhere will obligate Supplier to provide any greater indemnity.

6.2 Limitations. Supplier will have no obligation under [Clause 6.1 \(Indemnification by Dell\)](#) of this Schedule: (a) if Customer is in material breach of this Schedule or the Order; or (b) for any Claim resulting or arising from: (1) any combination, operation or use of a Product or Support Service with any other products, services, items, or technology, including Third Party Offerings and open source software; (2) use for a purpose or in a manner for which the Product or Support Service was not designed, or use after Supplier notifies Customer to cease such use due to a possible or pending Claim; (3) any modification made to the Product or Support Service performed by any person other than Supplier or its authorized representatives; (4) any modification made to the Product or Support Service performed by Supplier pursuant to instructions, designs, specifications or any other information provided to Supplier by or on behalf of Customer; (5) use of any version of a Product when an upgrade or newer iteration of the Product or Support Service made available by Supplier would have avoided the infringement; (6) services provided by Customer; or (7) any data or information (including but not limited to all text, sound, video, and image files), software (including machine images), and other information that Customer, including its end users, or a third party stores, uses or makes available to Supplier or others through or in connection with the Subscription, Product or Support Service including Customer Content.

6.3 Indemnification Process. Supplier’s duty to defend and indemnify under this Schedule is contingent upon the Customer: (a) sending prompt written notice of the Claim to Supplier and taking reasonable steps to mitigate damages; (b) granting to Supplier the sole right to control the defense and resolution of the Claim; and (c) cooperating with Supplier in the defense and resolution of the Claim and in mitigating any damages.

7. Definitions.

The definitions used in the CTS are also used in this Schedule. The following definitions also apply:



- 7.1 **“Asset Recovery”** of a Product means Supplier taking re-possession of the Product.
- 7.2 **“Bankruptcy”** means bankruptcy, receivership, examinership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings or statutory process instituted by or against the applicable entity, or all or any part of its property under the applicable law where such entity is organized, and such entity consents thereto or fails to cause the same to be discharged as per local legal requirements.
- 7.3 **“Billing Period”** means the period of time identified in an Order for which Supplier will invoice Customer for the Subscription.
- 7.4 **“Cloud Service Provider”** or **“CSP”** means a Cloud Service Provider in good standing in the Dell Technologies Partner Program purchasing a Subscription to provide services to its customer during the Subscription Term.
- 7.5 **“Colocation Site”** means, where applicable, a third-party Site.
- 7.6 **“Customer Content”** means data (including all text, sound, video, and image files), software (including machine images), and other information that Customer, or Customer’s end users store, use or make available to Supplier through use of the Subscription. Customer Content does not include System Data relating to Customer’s use of the Subscription and which is described in the Dell Telemetry Data Provision.
- 7.7 **“Effective Date”** of this Schedule means the effective date listed on the Order.
- 7.8 **“Fee”** means the fees for the Monthly Commitment and Reserve Usage.
- 7.9 **“Measuring Equipment”** means the equipment, software and programming needed for Supplier to track usage levels and perform Support Services.
- 7.10 **“Monthly Commitment”** means the minimum amount of usage the Customer commits to paying for each month as specified in an Order regardless of the actual usage.
- 7.11 **“Offering Specific Terms”** means those terms available at www.dell.com/offeringspecificterms.
- 7.12 **“Order”** means Customer’s order to Supplier for the Subscription that is confirmed by Supplier.
- 7.13 **“Reserve Usage”** means the amount of Customer’s flexible consumption usage above the Monthly Commitment.
- 7.14 **“Site”** means the location of the Product installation as identified on an Order.
- 7.15 **“Subscription”** means the Product(s) used on a flexible consumption basis as measured by the description and metrics from the Order for a defined period of time.
- 7.16 **“Subscription Term”** means the time period identified on an Order for use of the Subscription, and any Supplier approved extensions thereto. The Subscription Term commences on the first day of the month following the date the Products have been installed at the Site, or, if Customer delays the installation process or if Customer’s Site is not prepared for the installation of the Products, the first day of the second month following the Product’s arrival at the Site.
- 7.17 **“Supplier”** or **“Dell”** means the Dell Technologies entity that enters into the Order.

8. Location Specific Terms.

Find the location of the Site in the table below for applicable Location Specific Terms. Site locations are provided in alphabetical order, except in circumstances when locations share common terms.

Site location	Applicable Location Specific Terms
Austria	The following sentence is added to the end of Clause 1.3 (Payment) of this Schedule: “The Customer must pay any other fees arising from the nature of the contract.”



	<p>The following sentence is added to the end of Clause 3.2 (Interruption of Metering Capabilities) of this Schedule: “Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive provided the amount is not less than agreed for the Monthly Commitment.”</p> <p>Clause 5.2. (Remedies) of this Schedule is replaced with the following:</p> <p>“5.2 Remedies. If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders for Events of Default 5.1(ii)-(iii); (ii) immediately terminate any or all Orders if Customer has not paid two consecutive payments or has missed payments for a not insignificant amount of the Fees; (iii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iv) require Customer to make the Subscription available for Asset Recovery at the Site as provided in Clause 2.6 (Return of Products; Data Migration) of this Schedule. The parties will reasonably cooperate for Supplier to recover the Subscription. Customer is responsible for the payment of the actual documented costs and reasonable attorney’s fees incurred by Supplier in retaking possession of the Subscription and/or seeking to recover amounts due.”</p>
<p>Brazil</p>	<p>The following new Clause 1.5 (Currency Exchange) is added to Clause 1 (Orders and Payment) of this Schedule:</p> <p>“1.5 Currency Exchange. During the Subscription Term if the exchange rate variation of the US dollar is equal to or greater than 10 percent (10%), Supplier may adjust the exchange rate in the next month’s invoice. The exchange rate variation is measured by a comparison of the exchange rate from the date of the Order and the exchange rate on the date of the applicable invoice. The exchange rates are measured from the exchange rates issued by the Central Bank of Brazil.”</p> <p>The following new clause 2.2.1 is added to Clause 2.2 (Title to Subscription) of this Schedule:</p> <p>“2.2.1. At the end of the Subscription Term (as established in each Order) it is mandatory to return the Product(s) to Supplier, as they are the property of Supplier and there is no purchase option for the Customer. The Subscription is restricted to Customer’s use of the Product during the Subscription Term at the Site as described in this Schedule and the Order.”</p> <p>Clause 6.1.1 of the CTS for Brazil is not applicable to this Schedule.</p>
<p>Canada</p>	<p>The following will be added as a new Clause 1.5 is added to Clause 1 (Orders and Payment) of this Schedule:</p> <p>“1.5 The parties have required that this Schedule be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Schedule be written in English. Les parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document éra aux termes des présentes ou découlant de l’une quelconque de ses dispositions éra préparé en anglais.”</p>



<p>Czech Republic</p>	<p>The reference to the Civil Code means Act No. 89/2012Coll., as amended.</p> <p>The following is added at the end of the preamble of this Schedule:</p> <p>“The parties shall act as independent contractors for all purposes under this Schedule. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other. The parties confirm that neither party hereto is to be considered a weaker party and that the basic conditions of this Schedule are a result of the negotiations of the parties and that each party had the opportunity to influence the content of the basic conditions of this Schedule. Further, the parties explicitly confirm that they are entrepreneurs and that they conclude this Schedule in the course of their business; accordingly, the provisions of Section 1793 and 1796 of the Civil Code shall therefore not apply to this Schedule.</p> <p>This Schedule(s) and each Order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof and the parties exclude any assumption of rights and obligations which are out of the scope of the express provisions of this Schedule and which may be derived from any current or future business practices established among the parties, either existing in general and or within the relevant industry, and which are related to the subject of the performance under this Schedule, unless such business practices are expressly agreed upon in this Schedule; and (ii) may be modified only in a writing with evidence of acceptance by both parties. All terms of any purchase order or similar document provided by Customer, that are inconsistent or conflict with this Schedule, shall be null and void and of no legal force or effect.</p> <p>The parties agree (to the fullest extent permitted by the laws of the Czech Republic) that Sections 558(2) (to the extent in which it stipulates that business practice prevails over non-mandatory provisions of law), 1740 (3), 1747, 1748, 1936 (1), 1950, 1951, 1952 (2), 1971, 1978 (2), 1980 and 1987 (2), of the Civil Code do not apply for the purposes of this Schedule. Considering the nature and circumstances of this Schedule the parties expressly agree and acknowledge that it is not their intention to enter into a lease agreement within the meaning of the Civil Code and accordingly Section 2201 of the Civil Code does not apply to this Schedule. Customer bears the risk of a change in circumstances within the meaning of Section 1765(2) of the Civil Code.”</p> <p>The following is added to the end of Clause 3.2 (Interruption of Metering Capabilities) of this Schedule: “Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment.”</p>
<p>France</p>	<p>The following is added at the end of the preamble of this Schedule:</p> <p>“Each Party acknowledges that during the pre-contractual discussions the other party has delivered and has exchanged the volume of information sufficient in order to enter into this Schedule and related contractual documents and had the opportunity to negotiate all terms and conditions.</p> <p>The parties acknowledge and agree that the aggregate of the contractual terms and conditions are a consistent and well-balanced contractual framework regarding each party’s rights and obligations, including but not limited to, warranties, liabilities and financial terms.”</p>
<p>Germany</p>	<p>The following is added to the end of Clause 2.2 (Title to Subscription) of this Schedule:</p> <p>“If the Subscriptions are inseparably combined or mixed with other items not belonging to the Supplier of which the Subscriptions become an essential part (“wesentlicher Bestandteil”), Supplier shall acquire co-ownership of the new item in the ration of the value of the Subscription to the combined or mixed items at the time of combination or integration. If the Subscriptions are combined or mixed in/with other items in such way that the other item is to be regarded as the main item (“Hauptsache”), the Customer and Supplier hereby agree that the Customer shall transfer co-ownership of this item to Supplier on a pro rata basis. Supplier hereby accepts</p>



	<p>this transfer.”</p>
	<p>The following is added to the end of Clause 3.2 (Interruption of Metering Capabilities) of this Schedule:</p> <p>“Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment.”</p>
	<p>Clause 5.2. (Remedies) of this Schedule is replaced with the following:</p> <p>“5.2 Remedies. If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders for Events of Default 5.1(ii)-(iii); (ii) immediately terminate any or all Orders if Customer has not paid two consecutive payments or has missed payments for a not insignificant amount of the Fees); (iii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iv) require Customer to make Subscription available for Asset Recovery at the Site as provided in Clause 2.6 (Return of Products: Data Migration) of this Schedule. The parties will reasonably cooperate for Supplier to recover the Subscription. Customer is responsible for the payment of the actual documented costs and reasonable attorney’s fees incurred by Supplier in retaking possession of the Subscription and/or seeking to recover amounts due.”</p>
<p>Japan</p>	<p>The following sentences in Clause 1.4 (Purchase Orders) of this Schedule are deleted: “If Dell reasonably determines that the amount of Customer’s purchase order will not cover the actual Fee, then Dell will notify and discuss the situation with Customer. Upon agreement on the additional funds, Customer will promptly issue a related purchase order for that additional amount.”</p>
<p>Kingdom of Saudi Arabia, Qatar, or United Arab Emirates</p>	<p>The third sentence in the preamble is deleted and replaced with the following: “The Schedule includes and incorporates by reference all of the following terms and conditions of: (i) the Commercial Terms of Sale (“CTS”) for the United Kingdom available at Dell Online Terms, as amended by this Schedule but excluding any other schedules attached or incorporated thereto and (ii) the Order.”</p> <p>The following new Clause 9 (Dispute Resolution) is added to this Schedule:</p> <p>“9. Dispute Resolution. In the event of a dispute between the parties, arising out of or in connection with this Schedule, any Order or its subject matter or formation (including non-contractual disputes or claims) (“Dispute”) then the Dispute shall be referred to and finally resolved under the London Court of International Arbitration Rules (the “Rules”), which Rules are deemed to be incorporated by reference into this Clause. For the purposes of any arbitration commenced pursuant to this Clause: (i) there shall be a sole arbitrator; (ii) the seat, or legal place, of the arbitration shall be in the Dubai International Financial Centre in Dubai, UAE (notwithstanding the place of jurisdiction identified in the CTS); (iii) the governing law of the parties’ decision to arbitrate shall be the law of the Dubai International Financial Centre and the governing laws any Dispute are the laws of England and Wales, (iv) the arbitration hearings shall take place in Dubai, UAE; (v) the language to be used in the arbitration proceedings shall be English; and (vi) the award of the arbitrator shall be final and binding on the parties. The parties agree that each of them will not challenge any arbitral award made pursuant to arbitration proceedings conducted in accordance with this Clause in any court and will submit</p>



	<p>to the jurisdiction of the courts of the Dubai International Financial Centre for the purposes of enforcement proceedings. The parties agree that each of them will not object to or challenge any application to enforce any arbitral award made pursuant to arbitration proceedings conducted in accordance with this Clause in any court and will submit to the jurisdiction of the courts of the Dubai International Financial Centre. Any right of appeal or reference to points of law to the courts is waived, to the extent that such waiver can be validly made under applicable law. Nothing in this Schedule prevents or prohibits either party from seeking urgent interim relief in any UK court of competent jurisdiction, including pre-arbitral attachments, temporary restraining orders, temporary injunctions, permanent injunctions and/or orders of specific performance, as may appear reasonably necessary to preserve the rights of either party. The application by either party to a judicial authority for such measures shall not be deemed to be an infringement or a waiver of the parties' decision to arbitrate and shall not affect the relevant powers reserved to the arbitrator pursuant to this Clause."</p>
	<p>The following new Clause 10 is added to this Schedule:</p> <p>"10. Language. This Schedule and any Orders will be written and construed in the English language, and all questions of interpretation of this Schedule and any Orders shall be resolved by reference to the same as written in English. This Schedule and any Orders may not be translated into Arabic without the prior written consent of Dell. If the Schedule or any Orders are translated into the Arabic language or any other foreign language, the English version will prevail for all purposes, including any Disputes or claims that may be resolved by any legal proceeding. All communications between the parties in relation to this Schedule and any Orders shall be in English. If, in either case, a version translated into the Arabic language is required, Customer will prepare the translation. If the translation of any communication into the Arabic language is required, Customer shall be responsible for any associated costs, including any cost that Dell incurs in order to verify that a translation provided by Customer is accurate. Customer acknowledges that any translation, whether commissioned or paid for by Dell or Customer, shall be the property of Dell and shall constitute a part of Dell's confidential information."</p>
<p>Poland</p>	<p>The following new Clause 2.9 is added to Clause 2 (Delivery, Site, Use, Risk, and Return) to this Schedule:</p> <p>"2.9. Supplier, has the status of a large enterprise within the meaning of Article 4(6) of the Act on the Prevention of Excessive Delays in Commercial Transactions of 8 March 2013."</p>
<p>Switzerland</p>	<p>The following is added to the end of Clause 3.2 (Interruption of Metering Capabilities) of this Schedule: "Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment."</p>